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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO/ OAKLAND**

12 ROBERT TAYLOR,

13 Plaintiff,

14 v.

15 NATIONS DIRECT MORTGAGE, LLC;
16 ZBS LAW, LLP; and DOES 1-50,
17 inclusive,

18 Defendants.

19 VETERANS ADMINISTRATION,

20 Real Party In Interest.
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CASE NO.:

**COMPLAINT FOR VIOLATIONS OF
THE TRUTH IN LENDING ACT
(TILA), VIOLATIONS OF THE
DODD-FRANK ACT,
DECLARATORY RELIEF, UNFAIR
BUSINESS PRACTICES, BREACH
OF CONTRACT, NEGLIGENT
REVIEW OF LOAN
MODIFICATION, INJUNCTIVE
RELIEF AND DAMAGES; DEMAND
FOR JURY TRIAL**

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COMES NOW plaintiff Robert Taylor (plaintiff or Taylor), who avers the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Complaint under 28 U.S.C. §§ 1331 because it involves federal questions regarding interpretation and proper application of The Truth In Lending Act 15 U.S.C. Sec. 1640 (TILA) and the Dodd-Frank Act Title X, Subtitle C.

2. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has jurisdiction to render the declaratory judgment Plaintiff seeks pursuant to 28 U.S.C. § 2201.

VENUE/INTRADISTRICT ASSIGNMENT

4. Venue is proper in the San Francisco/Oakland branch of this Court pursuant to 28 U.S.C. § 1391(b)(2) and local rules because the subject Real Property is located in the City of Antioch, Contra Costa County, California.

PARTIES

5. Plaintiff, Robert Taylor is the borrower and owner of the subject real property.

6. Defendant, Nations Direct Mortgage, LLC (Nations Direct) was the lender and is the loan servicer.

7. Defendant, ZBS Law, LLP is the Trustee foreclosing upon plaintiff's real property.

8. The Veterans Administration is a Real Party In Interest because it guaranteed the subject loan, and VA rules apply to a VA loan modification.

9. Plaintiff designates all person's unknown claiming any interests in the real property as defendants DOES 1 through 50, inclusive. Plaintiff is ignorant of the true names, capacities, or basis for liability of defendants sued as DOES 1 through 50 and therefore sues defendants by such fictitious names. DOES 1 through 50 are in some manner liable to Plaintiff, or claims some right, title, or interest in the subject property,

1 or both. Plaintiff will amend this complaint to allege their true names and capacities
2 when ascertained.

3 10. Plaintiff is informed and believes and thereon alleges that, at all times herein
4 mentioned, Does 1 through 50 were the agents and employees of Defendant Nations
5 Direct Mortgage, LLC, and, in doing the things herein described and referred to, were
6 acting within the course and scope of their authority as such agents and employees,
7 and in the transaction of the business of the employment or agency. Defendants
8 Nations Direct Mortgage, LLC are, therefore, liable to Plaintiff for the acts of Does 1
9 through 50 as herein alleged.

10 11. Plaintiff is informed and believes and thereon alleges that, in doing the acts as
11 herein alleged, Defendants Nations Direct Mortgage, LLC knew, or in the exercise of
12 reasonable diligence should have known, that Defendants Does 1 through 50 were
13 incompetent and unfit to perform the duties for which they were employed, and that
14 an undue risk to persons such as Plaintiff would exist because of the employment.

15 12. Defendants Nations Direct Mortgage, LLC, their agents and employees, and
16 their officers, directors, and managing agents, have a duty of due care in the hiring,
17 training, and supervision of employees. Defendants Nations Direct Mortgage, LLC,
18 their agents and employees, and their officers, directors, and managing agents, have a
19 further duty of due care to investigate the background of their employees, especially in
20 light of the particular risk or hazard that the breach of that duty poses to customers
21 within their care.

22 13. Defendants Nations Direct Mortgage, LLC, their agents and employees, and
23 their officers, directors, and managing agents, knew, or had reason to know, that their
24 employees and agents, including Does 1-50, because of their qualities, were likely to
25 harm customers.

26 14. Defendants Nations Direct Mortgage, LLC, their agents and employees, and
27 their officers, directors, and managing agents, failed to exercise due care in the
28

1 interviewing, selection, training and supervision of their employees and agents, such
2 that their employees and agents, including Does 1-50, were likely to harm customers.

3 15. Defendants Nations Direct Mortgage, LLC, their agents and employees, and
4 their officers, directors, and managing agents, knew, or had reason to know, that their
5 employees and agents had a history of or propensity to fail to use due care, such that
6 their employees and agents, including Does 1-50, were likely to harm customers.

7 16. Plaintiff is informed and believes and thereon alleges that Defendants Nations
8 Direct Mortgage, LLC, after being informed of the actions of Does 1 through 50, did not
9 fully investigate and failed to repudiate and ratified the employees' conduct by
10 redressing the harm done, let the transactions proceed, and retained the employees in
11 employment.

12 17. Plaintiff is informed and believes and thereon alleges that, at all times herein
13 mentioned, each Defendant sued herein in relation to the Real Property he claims an
14 interest in was the agent and/or employee of each of the remaining Defendants thereof
15 and at all times was acting within the purpose and scope of such agency and/or
16 employment.

17 18. Whenever in this Complaint an act or omission of a corporation, partnership or
18 other business entity is alleged, the allegation shall be deemed to mean and include an
19 allegation that the corporation, partnership or other business entity acted or omitted to
20 act through its authorized officers, directors, agents, servants and/or employees, acting
21 within the course and scope of their duties, that the act or omission was authorized by
22 the officers and directors of the corporation or business entity.

23 **PRELIMINARY ALLEGATIONS**

24 19. Plaintiff is the owner in fee of the subject Real Property, which is located at, and
25 commonly known as, 5025 Star Mine Way, City of Antioch, State of California (the
26 subject "Real Property"), more particularly described as:

27 Real property in the unincorporated area of the County of
28 Contra Costa, State of California, described as follows:

1 Lot 38, as shown on the Map of Subdivision 7644, filed
2 September 25, 1996 in Book 389 of Maps, Page 29, and
3 Amended Map filed March 29, 2001 in Book 429 of Maps,
4 Page 39, Contra Costa County Records.

5 APN: 075-490-007

6 20. On or about January 19, 2022, Taylor received a Notice of Trustee's Sale stating
7 that Defendant ZBS Law, LLP, as the duly appointed trustee, will sell the subject Real
8 Property at a public auction to the highest bidder on March 7, 2022. (Exhibit 1.)

9 21. The Trustee's Sale was postponed to July 7, 2022 at 1:30 p.m. (Exhibit 2.)

10 22. The cause of the foreclosure is because defendant Nations Direct Mortgage, LLC
11 submitted an incomplete residential loan application on Taylor's behalf in order to
12 improperly qualify Taylor for a residential loan in violation of The Ability To Repay
13 Rules of The Truth In Lending Act, the Dodd Frank Act and Veterans Administration
14 standards. Nations Direct completely omitted key information from the loan
15 application concerning Taylor's income and employment background, as opposed to
16 merely making mistaken entries. Nations Direct completely omitted from the loan
17 application the contact information for Taylor's employer, the years on the job and the
18 years employed in this line of work and position. The lack of information on the
19 residential loan application is not explainable except to conclude that its absence was
20 designed to hide the fact that Taylor did not qualify for the loan. If employment and
21 income had been properly verified, it would have been revealed that Mr. Taylor did
22 not qualified for the loan under the Qualified Mortgage Rule or the VA Loan Program.
23 Correct underwriting would have required that the lender contact Taylor's employer
24 to ascertain his employment status, his income and the likelihood that his employment
25 would continue on a permanent basis. Inconsistencies with policy would have
26 required that a loan denial be issued.

27 23. Taylor learned about these facts on or about May 22, 2019, after he hired Patrick
28 Pulatie to conduct an audit of this loan. Since that time, Taylor has attempted all forms

1 of Loan Modification with Direct Mortgage without success. Taylor has submitted
2 complete Loss Mitigation packages, which were denied for arbitrary reasons. Denials
3 by Direct Mortgage have been made by negligence or in bad faith. The last denial by
4 Nations Direct was on April 19, 2022. A copy of that letter is attached as Exhibit 8.

5 24. As a result of the statutory violations by defendant Nations Direct, Taylor
6 should not be liable for interest, late fees, foreclosure charges, and the like. The
7 foreclosure should be enjoined until there is a trial on the merits. Under these
8 circumstances, Taylor should not have to post a bond.

9 25. In March of 2016, Taylor secured a new temporary position as an IT Contractor
10 for Olsonworks Consulting Group. The position would not become fully permanent
11 until Taylor had been employed for one full year after which Taylor could count on full
12 time employment.

13 26. On or about August of 2016, Taylor agreed to purchase the real property for
14 \$583,845. Taylor had been in the Air Force and chose to use his GI Bill Homeowner
15 Benefit to finance the purchase of the home. The originator was Rescom Financial. The
16 lender was Nations Direct Mortgage dba Motive Lending. The Veterans
17 Administration (VA) would guarantee the loan. The loan closed on September 12,
18 2016. The Taylor family moved into the home.

19 27. Taylor's employment with Olson Consulting Group was temporary and
20 sporadic over the next few months. After Taylor obtained the original loan, Taylor
21 made payments for several months but temporarily lost his employment fell behind
22 Taylor fell behind in the mortgage payment and was never able to catch up.

23 28. In November 2017 Taylor got an offer of full-time employment and an
24 accompanying pay increase. Taylor contacted Nations Direct to advise of this change
25 in circumstances and that Taylor wanted to make a payment on the loan. Taylor was
26 told that his tender of payment would not be accepted and that foreclosure
27 proceedings were being initiated. Ever since then Taylor has attempted loan
28 mitigation with Nations Direct without success.

1 29. A copy of the incomplete Residential Loan Application is attached as Exhibit 3.

2 30. On August 29, 2016, Taylor signed a promissory Note in the amount of
3 \$583,845.00 in favor of Nations Direct Mortgage LLC dba Motive Lending. A copy is
4 attached as Exhibit 4.

5 31. On August 31, 2016 Taylor signed a Deed of Trust securing the promissory note.
6 A copy is attached as Exhibit 5.

7 32. On August 31, 2016 Taylor signed a VA Guaranteed Loan and Assumption
8 Policy Rider. A copy is attached as Exhibit 6.

9 33. On November 22, 2017 Nations Direct Mortgage, LLC dba Motive Lending
10 executed an Assignment Of Deed of Trust to Nations Direct Mortgage LLC. A copy is
11 attached as Exhibit 7.

12 34. Taylor have attempted all forms of Loan Modification without success. Denials
13 by Direct Mortgage have been made by negligence or bad faith. Taylor has submitted
14 complete Loss Mitigation packages, which were denied for arbitrary reasons. The last
15 denial was on April 19, 2022. A copy of the denial letter is attached as Exhibit 8.

16 35. Taylor's current employment is steady, and his income is sufficient to pay a
17 reasonable mortgage payment.

18 36. The subject loan was originated as a Qualified Mortgage (QM) under the Dodd
19 Frank Act of 2000. The Qualified Mortgage Rule went into effect on January 10, 2014
20 through the Consumer Finance Protection Bureau (CFPB) which was tasked with
21 defining and implementing the Qualified Mortgage Rule.

22 37. The QM Rule prohibits or limits certain high risk loan products. By following
23 the QM rules the lender is provided a degree of legal protection from borrower
24 lawsuits either as a safe harbor provision nor a rebuttable presumption. However, the
25 safe harbor or rebuttable presumption is not guaranteed. The borrower may challenge
26 the QM status of the loan.

27 38. The Dodd Frank Act sections 1411 and 1412 generally require the creditor to
28 make a reasonably good faith determination of a consumer's ability to repay any

1 consumer credit transaction secured by a dwelling. It requires creditors to retain
2 evidence of compliance for three years after a covered loan is consummated.

3 39. Loans that meet the definition of QM are provided a "Safe Harbor" protection
4 that makes it more difficult for a borrower to sue a lender. The Loan is considered to
5 have met all QM requirements including the Ability To Repay rule.

6 40. For high-risk loans the lender receives a rebuttable presumption that standards
7 have been met including the Ability To repay Rule but if borrower ends up on
8 foreclosure the borrower can assert as a defense that the lender violated the Ability To
9 repay rule.

10 41. The original loan made to Taylor did not conform to either the Office of Veteran
11 Affairs standards or the Ability to Pay Rule under the Dodd Frank Qualified Mortgage
12 Standard which lack of conformity is the root cause of all the problems which have
13 followed concerning this loan. Nations Direct completely omitted key information
14 concerning Taylor's income and employment background as opposed to merely
15 making mistaken entries suggests fraudulent conduct. Nations Direct completely
16 omitted on the application the contact information for the employer, the years on the
17 job and the years employed in this line of work and position.

18 42. The subject loan was originated by Rescom Financial and originated and funded
19 by Nations Direct Mortgage LLC dba Motive Lending. The loan was not properly
20 underwritten by Nations Direct Mortgage LLC dba Motive Lending to Qualified
21 Mortgage requirements because they did not properly verify Taylor's current
22 employment history, job and salary. If employment and income had been properly
23 verified, it would have been revealed that Taylor did not qualify for the loan under the
24 Qualified Mortgage Rule or the VA Loan Program. Correct underwriting would have
25 required that the lender contact Taylor's employer to ascertain his employment status,
26 his income, and the likelihood that his employment would continue on a permanent
27 basis. Inconsistencies with policy would have required that a loan denial be issued.

1 43. The lack of information on the loan application is not explainable, except to
2 conclude that its absence was designed to hide the fact that Taylor did not qualify for
3 the loan.

4 44. Nations Direct as an agent for the VA lending program was tasked with
5 ensuring that the loan met the qualifications for the VA Guaranty Program. This
6 would include ensuring that Taylor met all the requirements for employment as
7 identified by the VA requirements. Nations was to conduct a verification of income.
8 Nations Direct failed in this duty. If Nations Direct had investigated properly there
9 would have been a red flag. If it had properly conducted the verification of
10 employment, they would have been required to deny the loan.

11 45. The subject loan is not a qualified mortgage and does not receive the protections
12 from the qualified mortgage safe harbor exemption.

13 46. Taylor is also making these claims in defense of this foreclosure action.

14 47. A consumer may assert a violation of TILA by a creditor of paragraph 1 or 2 of
15 section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense or
16 recoupment or set off without regard for the time limit on a private action for damages
17 under subsection (e). The amount of recoupment or set off under paragraph 1 shall
18 equal the amount to which the consumer would be entitled under subsection a, for
19 damages for a valid claim brought in an original action against the creditor plus the
20 costs to the consumer of the action, including a reasonable attorney fee.

21 48. The cause of the foreclosure is that defendant Nations Direct Mortgage, LLC
22 submitted an incomplete loan application on Taylor's behalf in order to improperly
23 qualify Taylor for a residential loan, in violation of The Ability to Repay Rules of The
24 Truth In Lending Act, the Dodd Frank Act, and Veterans Administration standards.
25 Since this is a non-qualified mortgage, Nations Direct has liability for improper lending
26 activities under Dodd-Frank and TILA and Taylor is claiming damages for interest
27 paid, closing fees, attorney's fees, actual damages and statutory penalties or damages.
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1 49. Taylor is also making these claims in defense of this foreclosure action.

2 50. For the reasons heretofore stated, Taylor has no adequate legal remedy in that
3 damages, if awarded, cannot be properly ascertained, since there is no fixed market
4 value and the damages will be inadequate to compensate Taylor for the detriment that
5 he would suffer by a foreclosure and eviction from his residence. The wrongful
6 conduct of Defendants, unless and until enjoined and restrained by order of this Court,
7 will cause great irreparable injury to Taylor, in that this is his residence.

8 51. If Defendants' conduct is not restrained, Taylor has no adequate remedy at law
9 for the injuries suffered and threatened, in that he will be forced to institute a
10 multiplicity of lawsuits and to vacate the subject Real Property while he is defending
11 title to his Real Property.

12 52. Defendants now threaten to (and unless restrained, will) sell Taylor's Real
13 Property, or cause it to be sold, to his great and irreparable injury, for which
14 pecuniary compensation would not afford adequate relief, in that the Real Property is
15 unique and is Taylor's primary home.

16 53. If a preliminary injunction is not entered by this Court, Taylor will suffer
17 immediate and irreparable harm, for which there is no adequate remedy at law. Taylor
18 has no adequate legal remedy in that damages, if awarded, cannot be properly
19 ascertained since there is no fixed market value, and damages will be inadequate to
20 compensate Taylor for the detriment suffered by him. Taylor will lose possession of a
21 unique parcel of real property for which Defendants seek to wrongfully acquire title.
22 The wrongful conduct of Defendants, unless and until enjoined and restrained by order
23 of this Court, will cause great irreparable injury to Taylor, in that the underlying
24 foreclosure proceedings are improper.

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COUNT I

Violations of The Truth In Lending Act 15 U.S.C. Sec. 1640 (TILA)

Plaintiff v. Nations Direct Mortgage LLC

54. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53, above, as though fully set forth in this action.

55. The subject loan was originated by Rescom Financial and originated and funded by Nations Direct Mortgage LLC dba Motive Lending. The loan was not properly underwritten by Nations Direct Mortgage LLC dba Motive Lending to Qualified Mortgage requirements because they did not properly verify Taylor's current employment history, job and salary. If employment and income had been properly verified then it would have been revealed that Taylor did not qualify for the loan under the Qualified Mortgage Rule or the VA Loan Program. Correct underwriting would have required that the lender contact Taylor's employer to ascertain his employment status, his income and the likelihood that his employment would continue on a permanent basis. Inconsistencies with policy would have required a loan denial be issued.

56. The lack of information on the application is not explainable except to conclude that its absence was designed to hide the fact that Taylor did not qualify for the loan.

57. Nations Direct as an agent for the VA lending program was tasked with ensuring that the loan met the qualifications for the VA Guaranty Program. This would include ensuring that Taylor met all the requirements for employment as identified by the VA requirements. Nations was to conduct a verification of income. Nations Direct failed in this duty. If it had properly conducted the verification of employment, they would have been required to deny the loan. If Nations Direct had investigated properly there would have been a red flag.

58. The subject loan is not a qualified mortgage and does not receive the protections from the qualified mortgage safe harbor exemption.

59. Taylor is also making these claims in defense of this foreclosure action.

1 60. A consumer may assert a violation of TILA by a creditor of paragraph 1 or 2 of
2 section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense or
3 recoupment or set off without regard for the time limit on a private action for damages
4 under subsection (e). The amount of recoupment or set off under paragraph 1 shall
5 equal the amount to which the consumer would be entitled under subsection a for
6 damages for a valid claim brought in an original action against the creditor plus the
7 costs to the consumer of the action including a reasonable attorneys fee.

8 61. The cause of the foreclosure is that because defendant Nations Direct Mortgage,
9 LLC submitted an incomplete loan application on Taylor's behalf in order to
10 improperly qualify Taylor for a residential loan in violation of The Ability To Repay
11 Rules of The Truth In Lending Act, the Dodd Frank ACT and Veterans Administration
12 standards. Since this is a non-qualified mortgage, Nations Direct has liability for
13 improper lending activities under Dodd-Frank and TILA, and Taylor is claiming
14 damages for interest paid, closing fees, attorney's fees, actual damages and statutory
15 penalties or damages.

16 62. Taylor is making these claims in defense of this foreclosure action.

17 63. For the reasons heretofore stated, Taylor has no adequate legal remedy in that
18 damages, if awarded, cannot be properly ascertained, since there is no fixed market
19 value and the damages will be inadequate to compensate Taylor for the detriment that
20 he would suffer by a foreclosure and eviction from his residence. The wrongful
21 conduct of Defendants, unless and until enjoined and restrained by order of this Court,
22 will cause great irreparable injury to me, in that this is Taylor's residence.

23 64. If Defendants' conduct is not restrained, Taylor has no adequate remedy at law
24 for the injuries suffered and threatened, in that he will be forced to institute a
25 multiplicity of lawsuits and to vacate the subject Real Property while he is defending
26 title to his Real Property.

27 65. Defendants now threaten to (and unless restrained, will) sell Taylor's Real
28 Property, or cause it to be sold, to his great and irreparable injury, for which

1 pecuniary compensation would not afford adequate relief, in that the Real Property is
2 unique and is Plaintiffs' primary home.

3 66. If a preliminary injunction is not entered by this Court, Taylor will suffer
4 immediate and irreparable harm, for which there is no adequate remedy at law. Taylor
5 has no adequate legal remedy in that damages, if awarded, cannot be properly
6 ascertained since there is no fixed market value, and damages will be inadequate to
7 compensate Taylor for the detriment suffered by him. Taylor will lose possession of a
8 unique parcel of real property for which Defendants seek to wrongfully acquire title.
9 The wrongful conduct of Defendants, unless and until enjoined and restrained by order
10 of this Court, will cause great irreparable injury to Taylor, in that the underlying
11 foreclosure proceedings are improper.

12 **COUNT II**

13 **Violations Of Dodd-Frank Act Title X, Subtitle C** 14 **Plaintiff v. Nations Direct Mortgage LLC**

15 67. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53,
16 above, as though fully set forth in this action.

17 68. The subject loan was originated by Rescom Financial, and originated and
18 funded by Nations Direct Mortgage LLC dba Motive Lending. The loan was not
19 properly underwritten by Nations Direct Mortgage LLC dba Motive Lending to
20 Qualified Mortgage requirements, because they did not properly verify Taylor's
21 current employment history, job and salary. If employment and income had been
22 properly verified, it would have been revealed that Taylor did not qualify for the loan
23 under the Qualified Mortgage Rule or the VA Loan Program. Correct underwriting
24 would have required that the lender contact Taylor's employer to ascertain his
25 employment status, his income and the likelihood that his employment would
26 continue on a permanent basis. Inconsistencies with policy would have required that a
27 loan denial be issued.
28

1 69. The lack of information on the loan application is not explainable, except to
2 conclude that its absence was designed to hide the fact that Taylor did not qualify for
3 the loan.

4 70. Nations Direct, as an agent for the VA lending program, was tasked with
5 ensuring that the loan met the qualifications for the VA Guaranty Program. This
6 would include ensuring that Taylor met all the requirements for employment as
7 identified by the VA requirements. Nations Direct was to conduct a verification of
8 income. Nations Direct failed in this duty. If Nations Direct had investigated
9 properly, there would have been a red flag. If it had properly conducted the
10 verification of employment, they would have been required to deny the loan.

11 71. The subject loan is not a qualified mortgage and does not receive the protections
12 from the qualified mortgage safe harbor exemption.

13 72. Taylor is also making these claims in defense of this foreclosure action.

14 73. A consumer may assert a violation of TILA by a creditor of paragraph 1 or 2 of
15 section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense or
16 recoupment or set off, without regard for the time limit on a private action for damages
17 under subsection (e). The amount of recoupment or set off under paragraph 1 shall
18 equal the amount to which the consumer would be entitled under subsection a for
19 damages for a valid claim brought in an original action against the creditor, plus the
20 costs to the consumer of the action, including a reasonable attorney fee.

21 74. The cause of the foreclosure is that because defendant Nations Direct Mortgage,
22 LLC submitted an incomplete loan application on Taylor's behalf in order to
23 improperly qualify Taylor for a residential loan, in violation of The Ability to Repay
24 Rules of The Truth In Lending Act, the Dodd Frank Act, and Veterans Administration
25 standards. Since this is a non-qualified mortgage, Nations Direct has liability for
26 improper lending activities under Dodd-Frank and TILA, and Taylor is claiming
27 damages for interest paid, closing fees, attorney's fees, actual damages and statutory
28 penalties or damages.

1 75. Taylor is also making these claims in defense of this foreclosure action.

2 76. For the reasons heretofore stated, Taylor has no adequate legal remedy in that
3 damages, if awarded, cannot be properly ascertained, since there is no fixed market
4 value, and the damages will be inadequate to compensate Taylor for the detriment that
5 he would suffer by a foreclosure and eviction from his residence. The wrongful
6 conduct of Defendants, unless and until enjoined and restrained by order of this Court,
7 will cause great irreparable injury to Taylor, in that this is his residence.

8 77. If Defendants' conduct is not restrained, Taylor has no adequate remedy at law
9 for the injuries suffered and threatened, in that he will be forced to institute a
10 multiplicity of lawsuits and to vacate the subject Real Property while he is defending
11 title to his Real Property.

12 78. Defendants now threaten to (and unless restrained, will) sell Taylor's Real
13 Property, or cause it to be sold, to his great and irreparable injury, for which
14 pecuniary compensation would not afford adequate relief, in that the Real Property is
15 unique and is Taylor's primary home.

16 79. If a preliminary injunction is not entered by this Court, Taylor will suffer
17 immediate and irreparable harm, for which there is no adequate remedy at law. Taylor
18 has no adequate legal remedy in that damages, if awarded, cannot be properly
19 ascertained since there is no fixed market value, and damages will be inadequate to
20 compensate Taylor for the detriment suffered by him. Taylor will lose possession of a
21 unique parcel of real property for which Defendants seek to wrongfully acquire title.
22 The wrongful conduct of Defendants, unless and until enjoined and restrained by order
23 of this Court, will cause great irreparable injury to Taylor, in that the underlying
24 foreclosure proceedings are improper.

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COUNT III
Declaratory Relief
Plaintiff v. Nations Direct Mortgage LLC

80. Plaintiff realleges and incorporates by reference paragraphs 1 through 53, above, as though fully set forth in this action.

81. Plaintiff contends that an actual controversy exists between Plaintiff and Defendants concerning their respective rights, duties, and obligations as to the following issues:

a. Taylor contends that Defendants are not authorized to proceed with foreclosure on the subject Real Property, in that Nations Direct granted a loan based on an incomplete residential loan application, which violated The Ability to Repay Rules of TILA and the Dodd Frank Act. Nations Direct disputes this contention.

b. Taylor desires a declaration by this Court as to the validity of Defendants' right to proceed with a non-judicial foreclosure of the subject Real Property.

82. Plaintiff alleges that Defendants' actions have undermined his right to the subject Real Property and have interfered, and continue to interfere, with his right of possession as the owner of the subject Real Property. A judicial declaration is necessary and appropriate at this time in these circumstances in order that Taylor may ascertain his rights and duties under the note and trust deed.

COUNT IV
UNFAIR BUSINESS PRACTICES
(Bus. & Prof. Code 17200 et seq.)
Plaintiff v. Nations Direct Mortgage LLC

83. Plaintiff re-alleges and incorporate by reference paragraphs 1 through 53, above, as though fully set forth in this action.

84. Plaintiff alleges that the unlawful acts and practices, as fully described herein, Plaintiff has no other remedy at law that will prevent the misconduct of Nations Direct, as alleged herein, from occurring and/or recurring in the future.

1 85. The subject loan was originated by Rescom Financial and originated and funded
2 by Nations Direct Mortgage LLC dba Motive Lending. The loan was not properly
3 underwritten by Nations Direct Mortgage LLC dba Motive Lending to Qualified
4 Mortgage requirements, because they did not properly verify Taylor's current
5 employment history, job, and salary. If employment and income had been properly
6 verified, it would have been revealed that Taylor did not qualify for the loan under the
7 Qualified Mortgage Rule or the VA Loan Program. Correct underwriting would have
8 required that the lender contact Taylor's employer to ascertain his employment status,
9 his income, and the likelihood that his employment would continue on a permanent
10 basis. Inconsistencies with policy would have required that a loan denial be issued.

11 86. The lack of information on the loan application is not explainable except to
12 conclude that its absence was designed to hide the fact that Taylor did not qualify for
13 the loan.

14 87. Nations Direct as an agent for the VA lending program was tasked with
15 ensuring that the loan met the qualifications for the VA Guaranty Program. This
16 would include ensuring that Taylor met all the requirements for employment as
17 identified by the VA requirements. Nations was to conduct a verification of income.
18 Nations Direct failed in this duty. If Nations Direct had investigated properly there
19 would have been a red flag. If it had properly conducted the verification of
20 employment, they would have been required to deny the loan.

21 88. The subject loan is not a qualified mortgage and does not receive the protections
22 from the qualified mortgage safe harbor exemption.

23 89. Taylor is also making these claims in defense of this foreclosure action.

24 90. A consumer may assert a violation of TILA by a creditor of paragraph 1 or 2 of
25 section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense or
26 recoupment or set off without regard for the time limit on a private action for damages
27 under subsection (e). The amount of recoupment or set off under paragraph 1 shall
28 equal the amount to which the consumer would be entitled under subsection a for

1 damages for a valid claim brought in an original action against the creditor, plus the
2 costs to the consumer of the action, including a reasonable attorney fee.

3 91. The cause of the foreclosure is that defendant Nations Direct Mortgage, LLC
4 submitted an incomplete loan application on Taylor's behalf in order to improperly
5 qualify him for a residential loan, in violation of The Ability To Repay Rules of The
6 Truth In Lending Act, the Dodd Frank Act, and Veterans Administration standards.
7 Since this is a non-qualified mortgage, Nations Direct has liability for improper lending
8 activities under Dodd-Frank and TILA, and Taylor is claiming damages for interest
9 paid, closing fees, attorney's fees, actual damages and statutory penalties or damages.

10 92. Taylor is also making these claims in defense of this foreclosure action.

11 93. For the reasons heretofore stated, Taylor has no adequate legal remedy in that
12 damages, if awarded, cannot be properly ascertained, since there is no fixed market
13 value and the damages will be inadequate to compensate Taylor for the detriment that
14 he would suffer by a foreclosure and eviction from his residence. The wrongful
15 conduct of Defendants, unless and until enjoined and restrained by order of this Court,
16 will cause great irreparable injury to Taylor, in that this is his residence.

17 94. If Defendants' conduct is not restrained, Taylor has no adequate remedy at law
18 for the injuries suffered and threatened, in that he will be forced to institute a
19 multiplicity of lawsuits and to vacate the subject Real Property while he is defending
20 title to his Real Property.

21 96. Defendants now threaten to (and unless restrained, will) sell Taylor's Real
22 Property, or cause it to be sold, to his great and irreparable injury, for which
23 pecuniary compensation would not afford adequate relief, in that the Real Property is
24 unique and is Taylor's primary home.

25 97. If a preliminary injunction is not entered by this Court, Taylor will suffer
26 immediate and irreparable harm, for which there is no adequate remedy at law. Taylor
27 has no adequate legal remedy in that damages, if awarded, cannot be properly
28 ascertained since there is no fixed market value, and damages will be inadequate to

1 compensate Taylor for the detriment suffered by him. Taylor will lose possession of a
 2 unique parcel of real property for which Defendants seek to wrongfully acquire title.
 3 The wrongful conduct of Defendants, unless and until enjoined and restrained by order
 4 of this Court, will cause great irreparable injury to Taylor, in that the underlying
 5 foreclosure proceedings are improper.

6 **COUNT V**
 7 **Breach of Contract**
 8 **Plaintiff v. Nations Direct Mortgage LLC**

9 98. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53,
 10 above, as though fully set forth in this action.

11 99. Plaintiff has performed all conditions, covenants, and promises required on his
 12 part to be performed in accordance with the terms and conditions of the contract.

13 100. Plaintiff requested that defendant perform its obligations under the contract.
 14 Instead, defendant breached the deed of trust in the following ways.

15 101. As a result of Defendants' breach of the contract, Plaintiff has been damaged in
 16 a sum within the jurisdiction of this Court, according to proof.

17 **COUNT VI**
 18 **Negligent Review Of Loan Modification Application**
 19 **Plaintiff v. Nations Direct Mortgage LLC**

20 102. Plaintiff hereby incorporates paragraphs 1-53, inclusive, as though fully set forth
 21 herein.

22 103. At all times and places relevant to this Complaint, Nations Direct handled,
 23 controlled, and managed the loan modification process.

24 104. Nations Direct owed a duty to Plaintiff to exercise reasonable care in performing
 25 its functions, duties and responsibilities, and knew or should have known with
 26 reasonable certainty that Plaintiff would suffer damages if it failed to perform its duties
 27 in a reasonable manner.

28 105. Nations Direct and its agents and representatives failed and neglected to perform
 its functions, duties, and responsibilities in its capacities as described above in a

1 reasonable manner, within the prevailing standard of care, and breached its duty of care
 2 to Plaintiff, the borrower, by committing the following actions, among others, and by
 3 violating HBOR:

4 106. The negligence and failure to perform due diligence by Nations Direct effectively
 5 led to the erroneous denials of the loan modification agreements, even while Nations
 6 Direct continued with the foreclosure of Plaintiffs' home. Nations Direct did not
 7 make a real, good faith attempt to analyze Taylor's situation, as a relatively low-cost
 8 workout would have prevented foreclosure and likely saved Nations Direct and its
 9 investors hundreds of thousands of dollars.

10 107. As a further direct and legal result of the negligence of Nations Direct, Taylor has
 11 suffered further compensatory damages according to proof, including damages for the
 12 lost value of the countless hours that he spent on the telephone and in preparing
 13 correspondence, documents, and financial and personal information in pursuit of a loan
 14 modification.

15 108. Accrued interest and late fees on Taylor's Loan should be voided, since they
 16 resulted from Nations Directs' errors and failure to perform its functions, duties, and
 17 responsibilities in a reasonable manner within the prevailing standard of care, including
 18 Nations Directs' improper, conflicting, and ambiguous denial of Taylor's loan
 19 modification applications.

20 **COUNT VIII**

21 **Injunctive Relief**

22 **Plaintiff v. Nations Direct Mortgage LLC; ZBS Law, LLP**

23 109. Plaintiff realleges and incorporates by reference paragraphs 1 through 53, above,
 24 as though fully set forth in this action.

25 110. Plaintiff is now, and at all times relevant to this Complaint was, an owner in fee
 26 of an owner in fee of the subject Real Property, a single-family residence where
 27 Plaintiff currently resides, and a borrower of the subject loan upon the Real Property.
 28

1 111. Defendants threaten to (and unless restrained, will) sell the Real Property, or
2 cause it to be sold, to Plaintiff's great and irreparable injury, for which pecuniary
3 compensation would not afford adequate relief, in that the Real Property is Plaintiff's
4 long-time home.

5 112. For the reasons heretofore stated, Plaintiff has no adequate legal remedy in that
6 damages, if awarded, cannot be properly ascertained since there is no fixed market
7 value, and damages will be inadequate to compensate Plaintiff for the detriment
8 suffered by him. The wrongful conduct of Defendants, unless and until enjoined and
9 restrained by order of this Court, will cause great irreparable injury to Plaintiff, in that
10 the underlying foreclosure proceedings are improper.

11 113. Plaintiff has offered, and continues to offer, to tender to defendant beneficiary or
12 defendant trustee all amounts that are found to be correctly due and owing.

13 114. The wrongful conduct of Defendants, unless and until enjoined and restrained
14 by order of this Court, will cause great irreparable injury to Plaintiff in that underlying
15 foreclosure proceedings which precipitated the unlawful detainer action was
16 improper.

17 115. If Defendants' conduct is not restrained, Plaintiff has no adequate remedy at law
18 for the injuries suffered and threatened, in that Plaintiff will be forced to institute a
19 multiplicity of lawsuits and to vacate the subject Real Property while he is defending
20 title to his Real Property.

21 116. By the actions above and set forth herein, Plaintiff has a strong likelihood of
22 prevailing on the merits of the case. Plaintiff requests that this Court grants an
23 injunction precluding Defendants from engaging in the wrongful conduct identified
24 herein in the future.

25 117. Plaintiff offers to pay the reasonable value of the property and any proper and
26 correct amount necessary to reinstate the loans pending this litigation.

1 WHEREFORE, Plaintiff demands judgment as follows:

2 **COUNT I**

3 **Violations of The Truth In Lending Act (TILA)**
4 **Plaintiff v. Nations Direct Mortgage LLC**

- 5 1. Compensatory damages according to proof;
6 2. Statutory penalties according to proof;

7 **COUNT II**

8 **Violations Of Dodd-Frank**
9 **Plaintiff v. Nations Direct Mortgage LLC**

- 10 3. Compensatory damages according to proof;
11 4. Statutory penalties according to proof;

12 **COUNT III**

13 **Declaratory Relief**
14 **Plaintiff v. Nations Direct Mortgage LLC**

- 15 5. For a declaration of the rights and duties of the parties, including a declaration
16 that a breach of the obligation for which the trust deed is security has not occurred.

17 **COUNT IV**

18 **UNFAIR BUSINESS PRACTICES**
19 **(Bus. & Prof. Code 17200 et seq.)**
20 **Plaintiff v. Nations Direct Mortgage LLC**

- 21 6. That the actions of Direct Mortgage be determined to be unfair business practices
22 in violation of Federal Statutes, and that this Court awards all such relief to Plaintiff as
23 he may be entitled, including injunctive relief, treble damages, and an award of costs
24 and attorney's fees;

- 25 7. For restoration of money or property acquired by unfair competition, including,
26 but not limited to, the value of any lost equity in Plaintiff's Real Property as a result of
27 the improper auction sale, and the value of the lost opportunity to seek other means of
28 preventing foreclosure; clouding of the Real Property's title; diminished vendibility of
the Real Property; lost equity in the Real Property; lost credit and earnings in the effort

1 to keep Plaintiffs' home from being foreclosed upon; lost time, or the value of the
2 countless hours that Plaintiff spent on the telephone and in preparing correspondence,
3 documents, and financial and personal information in pursuit of a loan modification;

4 8. For an order requiring Direct Mortgage to show cause, if any it has, why it
5 should now be enjoined as set forth below, during the pendency of this action;

6 9. For a temporary restraining order, a preliminary injunction, and a permanent
7 injunction, all enjoining Direct Mortgage from:

8 a. Engaging in any sale, transfer, conveyance, action or any conduct adverse to
9 Plaintiffs' interest;

10 b. Selling, or causing to be sold, the subject Real Property, or conducting a
11 Trustee's Sale of the subject Real Property;

12 c. For an immediate, preliminary and permanent restraining order and injunction
13 preventing defendants or any of their agents or representatives from taking any
14 further action on the subject Real Property;

15 d. That accrued interest and late fees on Plaintiff's loan be voided.

16 **COUNT V**

17 **Breach of Contract**

18 **Plaintiff v. Nations Direct Mortgage LLC**

19 11. For compensatory damages in a sum according to proof within the
20 jurisdiction of this court;

21 12. For interest according to proof;

22 13. For reasonable attorney's fees according to proof.

23 **COUNT VI**

24 **Negligent Review Of Loan Modification Application**

25 **Plaintiff v. Nations Direct Mortgage LLC**

26 14. For general damages according to proof;

27 15. For compensatory damages according to proof;

28 16. For injunctive relief;

17. For attorney fees under the relevant sections of the Deed of Trust.

COUNT VII
Injunctive Relief
Plaintiff v. Nations Direct Mortgage LLC; ZBS Law, LLP

18. That the foreclosure of the subject Real Property is deemed illegal and void and that the same be immediately and permanently enjoined; and that the Defendants named therein are prevented from engaging in any sale, transfer, conveyance, action or any conduct adverse to Plaintiff's interest;

19. For an order requiring Defendants to show cause why Defendants should not be enjoined as set forth below, during the pendency of this action;

20. For an immediate, preliminary and permanent restraining order and injunction preventing Defendants or any of their agents or representatives from taking any further action on the subject Real Property;

21. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining Defendant ZBS Law, LLP and all persons acting under, for, or in concert with that Defendant, from selling the subject Real Property or attempting to sell it or causing it to be sold, either under the power of sale in the trust deed or by foreclosure action;

ALL CAUSES OF ACTION

22. For interest at the legal rate on the foregoing sums according to proof, as applicable;

23. For an award of reasonable attorney's fees;

24. For costs of suit incurred herein; and

25. For such other and further relief as the Court may deem proper.

Dated: July 04, 2022


/s/ Richard Sax

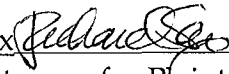
Richard Sax, Attorney for Plaintiff
Robert Taylor

1 DEMAND FOR JURY TRIAL

2 Plaintiff ROBERT TAYLOR hereby demands a jury trial.

3
4 Dated: July 04, 2022

LAW OFFICES OF RICHARD SAX

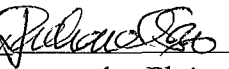
5
6 /S/ Richard Sax 
7 Richard Sax, Attorney for Plaintiff
8 Robert Taylor
9

10 CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

11
12 Pursuant to Civil L.R. 3-15, the undersigned certifies that as of this date, other
13 than the named parties, there is no such interest to report.
14

15 Dated: July 04, 2022

LAW OFFICES OF RICHARD SAX


16
17 /S/ Richard Sax 
18 Richard Sax, Attorney for Plaintiff
19 Robert Taylor
20

21 ATTESTATION

22 I, Richard Sax, hereby attest that I have on file all holographic signatures
23 corresponding to any signatures indicated by a conformed signature (/S/) within this
24 e-filed document.

25 Dated: July 04, 2022

LAW OFFICES OF RICHARD SAX

26 /S/ Richard Sax 
27 Richard Sax, Attorney for Plaintiff
28 Robert Taylor